



21 JAN 2009

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In re Application of :
IONESCU, Adrian F. :
U.S. Application No.: 10/595,415 :
PCT No.: PCT/US2004/034097 :
Int. Filing Date: 18 October 2004 :
Priority Date: 17 October 2003 :
Attorney Docket No.: 22148-00004-US2 :
For: BALLAST PROTECTING DEVICE :

DECISION

This is a decision on the papers filed 21 November 2008.

BACKGROUND

On 17 April 2006, applicants filed papers to enter the national stage of PCT/US2004/034097. No fees accompanied this request.

On 01 February 2008, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required.

On 09 October 2008, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) for failing to respond to the Form PCT/DO/EO/905 mailed 01 February 2008.

On 21 November 2008, applicants submitted a petition under 37 CFR 1.137(b) accompanied by, *inter alia*, a petition under 37 CFR 1.47(b) and/or 37 CFR 1.42.

DISCUSSION

A review of the application shows that applicant failed to provide the basic national fee prior to the expiration of thirty months from the priority date required by 37 CFR 1.495(b)(2). Therefore, the above-identified application was abandoned by operation of law at midnight on 17 April 2006.

Accordingly, the Form PCT/DO/EO/905 mailed 01 February 2008 and Form PCT/DO/EO/909 mailed 09 October 2008 are **VACATED**.

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In the response filed 21 November 2008, applicant filed a petition to revive under 37 CFR 1.137(b). A petition to revive pursuant to 37 CFR 1.137(b) requires: (1) a proper reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply to the filing of a grantable petition pursuant to this paragraph was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

The basic national fee, search fee, examination fee and surcharge fee for a small entity has been charged to Deposit Account No. 22-0185 as authorized. The petition fee of \$810.00 was provided. The petition included the required statement. Item (4) is not required. As such, all items of 37 CFR 1.137(b) are satisfied.

CONCLUSION

Applicants' petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the DO/EO/US to mail a new Form PCT/DO/EO/905 requesting a declaration in compliance with 37 CFR 1.497(a) and (b).

It is noted that applicants submitted evidence for a petition under 37 CFR 1.47(b) including the \$200.00 petition fee. This is not appropriate. The \$200.00 petition fee has been refunded.

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42.

Inventor Adrian F. Ionescu is deceased. Applicants have not identified the legal representative of Mr. Ionescu. Applicants must provide a declaration executed by the legal representative of the estate of Adrian F. Ionescu. If a legal representative was appointed, but has since been discharged, a legal representative must be reappointed. See MPEP § 409.01(c). If after a diligent effort the legal representative cannot be located, or refuses to cooperate, a petition under 37 CFR 1.47(b) would be appropriate. See MPEP § 409.03(c).



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